



Office of the Attorney General
State of Texas

June 15, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Cathy Locke
City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842-0960

OR93-322

Dear Ms. Locke:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20453.

The City of College Station (the "city") has received twenty-three letters requesting information relating to Mr. Terry David Wayne Washington, who is scheduled to be executed June 17, 1993, for the offense of capital murder. Specifically, the requestor seeks "an opportunity to review and copy all files, records and any other documents in the possession of the College Station Police Department pertaining" to twenty-three individuals who were witnesses in the case against Mr. Washington. You have submitted the requested information to us for review and claim that it is excepted from required public disclosure by sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.

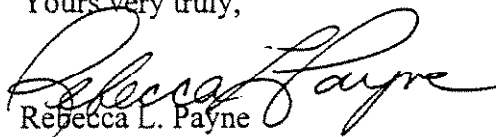
Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977); *see also* Open Records Decision No. 586 (1991) (law enforcement interest of third party may be compelling).

It is not clear from your letter that you have met the ten day deadline. Your letter to this office is dated May 27, 1993, and we received it on that date. Your letter states that you received the requests for information on May 12, 1993, and that your request is being made to our office within ten days of receipt of the letters applying for information. Finally, the letters submitted to you by the requestor are dated May 12, 1993, and stamped "RECEIVED MAY 18, 1992." We are unable to determine whether you have requested a decision within the ten days required by section 7(a) of the act. However, since we have concluded that the requested information may be withheld in its entirety pursuant to a right of privacy, we need not resolve this initial question.

We note that the requested information must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." *See also* V.T.C.S. art. 6252-17a, § 10 (distribution of confidential information prohibited). The letters request information about the time that each individual was in the custody of or under investigation by the College Station Police Department. Thus, they seek nothing more than a compilation of criminal history record information held by the city police department regarding the twenty-three named individuals. Such information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with individual privacy rights. *See United States Department of Justice v. Reporters Committee for Freedom of the Press*, 109 S. Ct. 1468 (1989) (where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's constitutional right of privacy). *See also Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (holding that section 3(a)(8) of the Open Records Act makes confidential information on privacy grounds); *see also* Open Records Decision No. 127 (1976) at 6. We thus conclude that you have overcome the presumption of openness arising from a possible failure to seek a timely determination. Accordingly, the requested information must be withheld in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-322.

Yours very truly,


Rebecca L. Payne
Chief, Open Government Section
Opinion Committee

RLP/GCK/jmn

Enclosures: Documents

Ref.: ID# 20453

cc: Mr. John W. Michener, Jr.
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